Emasin Resources Sdn Bhd v Pentadbir Tanah Port Dickson

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-01–509–12 OF 2014
UMI KALTHUM, BADARIAH SAHAMID AND KAMARDIN HASHIM JJCA
12 OCTOBER 2017

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Land Law — Acquisition of land — Compensation — Award by land administrator — Reference to land reference court — Part of land administrator's award set aside — Whether land reference court acted in excess of jurisdiction — Whether award by land administrator merely an offer — Whether appeal premised on compensation payable — Whether appeal barred — Land Acquisition Act 1960 ss 12, 14(1), 40D(3) & 49(1)

D

The appellant was the registered proprietor of 158.7436 hectares of land ('the land'). Vide the Negeri Sembilan *Gazette*, a few hectares of the appellant's land were compulsorily acquired by the state authority for the purpose of a project. Pursuant to an enquiry under s 12 of the Land Acquisition Act 1960 ('the LAA'), the respondent awarded compensation in accordance with s 14(1) of the LAA to the appellant in the amount of RM3,002,791.08 as compensation for land acquired and RM3,170,004.42 as compensation for injurious affection. The appellant lodged its Form N requesting the respondent to refer its objection as to the insufficiency of the quantum of compensation awarded to the land reference court. The respondent then referred the appellant's objection to the land reference court ('the land reference'). At the hearing of the land reference, the respondent submitted that the respondent's award for compensation for injurious affection ought to be reviewed and set aside. The High Court, sitting as the land reference court, thus ordered the appellant to return the compensation for injurious affection to the respondent. Dissatisfied, the appellant filed this appeal, premised on the ground that the land reference court had acted in excess of its jurisdiction when it proceeded to set aside part of the respondent's/land administrator's award for compensation.

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Held, dismissing the appeal with costs of RM15,000:

(1) The land reference court had not acted in excess of its jurisdiction by setting aside the award of the respondent for injurious affection despite the lack of any objection filed in Form N. The High Court, with the assistance of the assessors, as the land reference court, had the jurisdiction and the power to evaluate the award given by the respondent. This was due to the fact that the award by the respondent was merely an offer (see para 16).

I

(2) When the reference was made to the land reference court by the filing of Form O by the respondent after the objection by the appellant to the offer made to the appellant, the parties were deemed to have submitted themselves to the jurisdiction of the land reference court and thereafter it was under the purview of the land reference court to hear the appellant's application and to determine the appropriate award to be given, if any. Thus, the land reference court had not in any way acted beyond the scope of its powers by setting aside the award for injurious affection (see paras 18 & 20).

(3) This whole appeal was premised upon the compensation payable. Therefore, pursuant to the provisions of s 40D(3) read together with s 49(1) of the LAA, this present appeal was barred. The appellant was precluded from appealing against the compensation awarded by the High Court. This appeal was not maintainable by reason of the express provisions of s 68(1)(d) of the Courts of Judicature Act 1964 which clearly states that no appeal shall be brought to the Court of Appeal, inter alia, where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final (see paras 21 & 26).

[Bahasa Malaysia summary

Perayu adalah pemilik berdaftar 158.7436 hektar tanah ('tanah'). Melalui *Warta* Negeri Sembilan, beberapa hektar tanah perayu telah diambil secara wajib oleh pihak berkuasa negeri untuk tujuan sebuah projek. Berikutan inkuiri bawah s 12 Akta Pengambilan Tanah 1960 ('APT'), responden mengawardkan pampasan selaras dengan s 14(1) APT kepada perayu dalam jumlah RM3,002,791.08 sebagai pampasan kesan mudarat. Perayu mengemukakan Borang N meminta responden merujuk bantahannya berkenaan kekurangan kuantum pampasan yang diawardkan kepada mahkamah rujukan tanah. Responden kemudiannya merujuk bantahan perayu kepada mahkamah rujukan tanah ('rujukan tanah'). Semasa perbicaraan rujukan tanah itu, responden menghujahkan award pampasan yang diberi oleh responden untuk pampasan kesan mudarat harus disemak semula dan diketepikan. Mahkamah Tinggi, bersidang sebagai mahkamah rujukan tanah, dengan itu memerintahkan perayu mengembalikan pampasan untuk kesan mudarat kepada responden. Tidak berpuas hati, perayu memfailkan rayuan ini, atas alasan mahkamah rujukan tanah telah bertindak luar bidang kuasanya apabila mengetepikan sebahagian award pampasan yang diberi oleh responden/pentadbir tanah.

Diputuskan, menolak rayuan dengan kos sebanyak RM15,000:

(1) Mahkamah rujukan tanah tidak bertindak melebihi bidang kuasanya dengan mengetepikan award responden untuk kesan mudarat walaupun tidak terdapat apa-apa bantahan yang difailkan dalam Borang N.

Mahkamah Tinggi, dengan bantuan pentaksir-pentaksir, sebagai mahkamah rujukan tanah, mempunyai bidang kuasa dan kuasa untuk menilai award yang diberi oleh responden. Ini berdasarkan fakta bahawa award yang diberi oleh responden cuma satu tawaran (lihat perenggan 16).

(2) Apabila rujukan dibuat kepada mahkamah rujukan tanah dengan pemfailan Borang O oleh responden selepas bantahan perayu terhadap tawaran yang dibuat kepadanya, pihak-pihak dianggap berserah diri pada bidang kuasa mahkamah rujukan tanah dan dengan itu adalah di bawah bidang kuasa mahkamah rujukan tanah untuk mendengar permohonan perayu dan menentukan award yang sesuai diawardkan, jika ada. Oleh itu, mahkamah rujukan tanah tidak dalam apa-apa jua cara pun bertindak melebihi skop kuasanya dengan mengetepikan award untuk kesan mudarat (lihat perenggan 18 & 20).

(3) Seluruh rayuan ini berdasarkan bayaran pampasan. Oleh itu, menurut peruntukan s 40D(3) dibaca bersama-sama dengan s 49(1) APT, rayuan ini dihalang. Perayu dilarang merayu terhadap pampasan yang diawardkan oleh Mahkamah Tinggi. Rayuan ini tidak dapat dikekalkan atas alasan peruntukan s 68(1)(d) Akta Mahkamah Kehakiman 1964 dengan jelasnya menyatakan bahawa tiada rayuan boleh dikemukakan di Mahkamah Rayuan, antara lain, apabila terdapat undang-undang bertulis yang berkuat kuasa, penghakiman atau perintah Mahkamah Tinggi telah diisytiharkan sebagai muktamad (lihat perenggan 21 & 26).]

Notes

For cases on compensation, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2345–2404.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2018] Supp MLJ 256; [2011] 5 CLJ 125, FC (refd)

Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng And Cross Appeals [1971] 1 MLJ 43, PC (refd)

Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)

Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal [2013] 6 MLJ 626; [2013] 9 CLJ 152, FC (refd)

The Assistant Development v Tayaballi Allibhoy Bohori (1933) 35 BOMLR 763, HC (refd)

Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 3 MLJ 185, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 68(1)(d)
Land Acquisition Act 1960 ss 2, 12, 14(1), 40D, 40D(3), 49(1), Forms H, N, O

Appeal from: Civil Suit No 15–1–01 of 2014 (High Court, Seremban)

G Rajasingam (Nik Azila, Shuhada and R Aswath with him) (Shearn Delamore & Co) for the appellant.
Rozaimah bt Adnan (Roziaton Mohd Nordin and Mohd Fairuz Iskandar with her) (State Legal Advisor's Office of Negeri Sembilan) for the respondent.

Umi Kalthum JCA:

INTRODUCTION

[1] This was an appeal against part of the decision of the Land Reference Court delivered on 30 October 2014.

[2] The appeal was premised on the grounds that the Land Reference Court had acted in excess of its jurisdiction when it proceeded to set aside part of the respondent's/land administrator's award for compensation.

[3] For ease of reference, the applicant and the respondent at the Land Reference Court will be referred to as the appellant and the respondent respectively in these grounds of judgment.

BRIEF FACTS

[4] The appellant is the registered proprietor of 158.7436 hectares of land held under Lot 2743, Grant 72467 in Mukim of Linggi, District of Port Dickson, State of Negeri Sembilan Darul Khusus ('the land').

[5] Vide the Negeri Sembilan *Gazette* No 211 dated 28 March 2013, 6.9223 hectares of the appellant's land were compulsorily acquired by the State Authority of Negeri Sembilan for the purpose of 'Projek bagi Mengatasi Ancaman Keruntuhan Tanah dan Pembesaran Kolej Kemahiran Tinggi, MARA, Daerah Port Dickson, Negeri Sembilan'.

[6] Pursuant to an enquiry under s 12 of the Land Acquisition Act 1960 ('the LAA') on 15 May 2013, the respondent awarded compensation in accordance with s 14(1) of the LAA to the appellant in the amount of RM3,002,791.08 as compensation for land acquired and RM3,170,004.42 as

compensation for injurious affection. The total amount of compensation was RM6,172,795.50.

[7] The appellant accepted the respondent's award under protest and without prejudice to its right to appeal against the quantum of compensation that had been awarded. On 21 December 2013, the appellant lodged its Form N requesting the respondent to refer its objection as to the insufficiency of the quantum of compensation awarded to the Land Reference Court.

[8] The respondent then referred the appellant's objection to the Land Reference Court vide Form O on 2 January 2014 and it was registered at the High Court of Seremban under Land Reference No 15–1–01 of 2014 ('the land reference').

[9] At the hearing of the Land Reference, counsel for the respondent submitted that the respondent's award for compensation for injurious affection in the sum of RM3,170,004.42 ought to be reviewed and set aside.

DECISION OF THE LAND REFERENCE COURT/HIGH COURT

[10] The Land Reference Court vide order dated 30 January 2014 (pp 352–353, supplementary record of appeal) had decided as follows:

10.1 the appellant's claim for increase of compensation for value of land was dismissed and the award of the respondent was maintained;

10.2 the appellant's claim for increase of compensation for 'injurious affection' was dismissed;

10.3 the respondent's award dated 14 October 2013 awarding RM3,170,004.42 as 'Injurious Compensation' was set aside; and

10.4 the appellant was ordered to return the compensation for injurious affection to the respondent.

[11] The appellant being dissatisfied with the decision of the Land Reference Court viz the orders in paras 10.2, 10.3 and 10.4 above filed this appeal.

THE APPEAL

[12] If this court was with the appellant in this appeal, the appellant had asked for an order that the appellant's objection as to the insufficiency of the respondent's award for injurious affection be remitted back to the Land Reference Court for a rehearing with different assessors in relation to the said objection.

[13] The appellant's first ground of appeal was that the Land Reference Court had acted in excess of its jurisdiction when it proceeded to set aside the respondent's award for compensation for injurious affection in the absence of Form N objecting to the validity or the excessiveness of that amount of compensation.

[14] It was the appellant's contention that neither the state government nor the corporation (MARA), on whose behalf the subject land was acquired, had lodged an objection by way of Form N, contending that the respondent's award for injurious affection was wrong, invalid or excessive. The appellant argued that in the absence of any 'objection' lodged by the said persons interested as to the purported excessive award and its validity, the Land Reference Court had acted in excess of its jurisdiction when it proceeded to hear and decide on the injurious affection matter.

[15] The appellant further argued that the land administrator/respondent could not contend that he is 'persons interested' as defined under s 2 as the land administrator's role before a Land Reference Court could be perceived as the defendant where in the event that the applicant/appellant succeeded in showing that the land administrator's award was inadequate, then the land administrator must support his award by producing evidence. If the applicant failed to produce evidence to show that the award was inadequate, the only outcome permitted by the LAA is for the Land Reference Court to either dismiss the objection or maintain the land administrator's award, but not to set aside the land administrator's award.

[16] We, however, were of the view that the Land Reference Court had not acted in excess of its jurisdiction by setting aside the award of the respondent for injurious affection despite the lack of any objection filed in Form N. We were of the view that the High Court, with the assistance of the assessors, as the Land Reference Court, had the jurisdiction and the power to evaluate the award given by the respondent. This was due to the fact that the award by the respondent was merely an offer.

[17] The word 'offer' was clearly used in Form H and also by the respondent as follows:

> Borang H
>
> (Seksyen 16)
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> PEMBERITAHU PEMBERIAN DAN *TAWARAN PAMPASAN*
>
> ...
>
> 2. Pada menurut pemberian ini maka saya dengan ini *menawarkan* tuan/puan wang sebanyak *RM6,172,795.50* iaitu jumlah yang dinyatakan di bawah ini sebagai pampasan penuh bagi kepentingan tuan/puan atas tanah ini.

Reference was made to the case of *Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185, as per Justice Abdul Hamid Said, where the learned Justice in his grounds of judgment, at p 190, made a reference to one Indian High Court case of *The Assistant Development v Tayaballi Allibhoy Bohori* (1933) 35 BOMLR 763 where it was held that the proceedings before the acquiring officer are '... administrative rather than judicial'. The said High Court went on to say that the '... acquiring officer's award is, of course, strictly speaking not an award at all, but an offer. It is based on an inquiry and inspection ...'.

[18] When the reference was made to the Land Reference Court by the filing of Form O by the respondent after the objection by the appellant to the offer made to the appellant, parties were deemed to have submitted themselves to the jurisdiction of the Land Reference Court and thereafter it was under the purview of the Land Reference Court to hear the appellant's application and to determine the appropriate award to be given, if any.

[19] The Privy Council in the case of *Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng And Cross Appeals* [1971] 1 MLJ 43 had, at p 44, left side, affirmed that the hearing at the High Court is the actual forum where the High Court shall have the adequate and proper jurisdiction to determine the adequate compensation for the appellant:

> Although upon referring an objection to the High Court for its determination the collector is required to state the grounds on which the amount of compensation was determined, the reference to the High Court is not in the nature of an appeal from the Collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant. The onus lies upon the applicant to satisfy the court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The judge, with the assistance of the advice proferred to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him ...

[20] Thus, guided by the above authorities, we observed that the Land Reference Court had not in any way acted beyond the scope of its powers by setting aside the award for injurious affection.

Section 40D(3) read together with s 49(1) of the LAA

[21] Despite the appellant's submission that this present appeal dealt with the question whether the Land Reference Court had acted in excess of its jurisdiction and whether a land administrator can review his own award, we must state unequivocally that this whole appeal was premised upon the

compensation payable. Therefore, pursuant to the provisions of s 40D(3) read together with s 49(1) of the LAA, this present appeal was barred.

[22] We refer to s 40D of the LAA which provides as follows:

> Section 40D Decision of the Court on compensation
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> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
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> (2) Where the assessors have each arrived at a decision which differs from each other then the judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon the assessor.
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[23] Reference is further made to the proviso to sub-s 49(1) of the LAA where it is stated that:

> 49 Appeal from decision as to compensation
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> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[24] Meanwhile, the Federal Court in the case of *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626; [2013] 9 CLJ 152 discussed the application of s 40D, at p 633 (MLJ); pp 158–159 (CLJ), as follows:

> [17] Thus, while s 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s.40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter. This non-appealable provision of s 40D(3) is further reinforced by the proviso of s 49(1) which reads:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.
>
> ...
>
> [20] With the introduction of s 40D and the amendment to the proviso of s 49(1), the intention of the Parliament is very clear ie, to preclude any party from appealing

against the order of compensation made by the High Court ...

See also Federal Court case of *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2018] Supp MLJ 256; [2011] 5 CLJ 125; Court of Appeal case of *Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571.

[25] This court was of view that the plain reading of the above provisions clearly stipulated that any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[26] We were of the considered view that this court must give effect to the clear provisions of the law. As such, we were of the view that the appellant was precluded from appealing against the compensation awarded by the learned High Court judge. We were also in agreement that this appeal was not maintainable by reason of the express provisions of s 68(1)(d) of the Courts of Judicature Act 1964 which clearly states that no appeal shall be brought to the Court of Appeal, inter alia, where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final. The decision on appeal before us was in fact a final decision. Thus, this appeal could not stand.

CONCLUSION

[27] For the reasons given, we were of the unanimous view that the appeal be dismissed with costs of RM15,000 and the deposit to be refunded to the appellant. The order of the High Court was hereby affirmed.

Appeal dismissed with costs of RM15,000.

Reported by Afiq Mohamad Noor